a

SYARIKAT EMERALD TILES SDN. BHD.

v.

**MENTERI BURUH DAN TENAGA RAKYAT & ANOR
(THE NON - METALLIC MINERAL PRODUCTS MANUFACTURING EMPLOYEES UNION, INTERVENER)**

b

HIGH COURT, KUALA LUMPUR
DATO' SITI NORMA YAAKOB J.
[ORIGINATING MOTION NO. R8 - 32 - 167 - 88]
30 SEPTEMBER 1994

c ***INDUSTRIAL LAW: Union making claim for recognition - Director-General for Industrial Relations granting recognition - Company refusing to accord recognition - Reference to Minister - Minister deciding in favour of union - Company applying for certiorari to quash Minister's decision.***

The intervener made a claim for recognition of the Company's (applicant's) workmen under s. 9(2) of the Industrial Relations Act 1967 (the Act). The applicant
d disputed the intervener's claim and the intervener reported the matter to the Director-General for Industrial Relations pursuant to the provisions of s. 9(4) of the Act. A membership check of the applicant's workmen, pursuant to the provisions of Regulation 4(1)(c) of the Industrial Relations Regulations 1980 (the 1980 Regulations), showed that 78.98% of the workmen in respect of whom recognition was sought are members of the intervener, and to that end, recogni-
e tion was granted to the intervener to represent such workmen.

The applicant refused to accord such recognition and on referral to the first respondent, the first respondent decided that the applicant is to accord recognition to the intervener.

The applicant applied for a writ of *certiorari* to quash the decision of the first
f respondent on the grounds that there was a breach of natural justice when it was not allowed to participate in the membership check conducted by the second respondent and when it was not given an opportunity to be heard before the first respondent made his decision.

The applicant further contended that the manner in which the calculation of the majority of workmen entitled to be recognised was wrong as the denominator
g should be the total number of its workers and not the total number of workers in a given class in respect of whom recognition is sought.

Held:

[1] In conducting the membership check, the second respondent was merely performing an administrative act which he was empowered to do under Regulation
h 4(1)(c) of the 1980 Regulations. The second respondent was merely ascertaining the percentage of workmen in respect of whom recognition was sought and to that end, the rules of natural justice have no application whatsoever. For so long as all the requirements and procedures in the 1980 Regulations had been complied with, and there was no suggestion to say otherwise, there was no irregularity in the second respondent's action in conducting the membership check.

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[2] Likewise, there is nothing to suggest that the first respondent had exceeded his jurisdiction under s. 9(5) of the Act when he decided to grant recognition to the intervener. Since there is no provision in either the Act or the 1980 Regulations, which entitles the applicant to be heard before the first respondent made his decision, there was no justification for the applicant's complaint that it had been denied the right to be heard before the first respondent made his decision.

[3] Section 9(1) of the Act excludes 4 categories of workmen from representation. Thus if the total number of workmen is accepted as the denominator, as contended by the applicant, this would mean that the intervener would be representing workmen who fall within any of the prohibited 4 categories and this would run foul of s. 9(1) of the Act.

[4] Since the intervener can only represent a class of workmen, it is the total number of workmen within that class that is taken into account when calculating the percentage of workmen who are members of the intervener. Therefore it would not be right to consider the total number of workmen employed by the applicant as the denominator.

[5] On the facts, as there was nothing wrong with the format of calculation adopted by the second respondent and as there was no excess of jurisdiction on the part of the first respondent, the applicant's application for a writ of *certiorari* to quash the decision of the first respondent should be dismissed.

[Applicant's originating motion dismissed with costs].

Legislation referred to:
Industrial Relations Act 1967, ss. 9(2), 9(4A), 9(5), 9(1)
Industrial Relations Regulations 1980, rr. 4(1) (a), 4(1) (c)

For the applicant - S. Kulasegaran (Usha Kulasegaran with him); M/s. Ranjit, Thomas & Kula.
For the respondents - Vong Poh Fah, Senior Federal Counsel.
For the intervener - P. Kuppusamy (Seah Loo Gen with him); M/s. P. Kuppusamy & Co.

JUDGMENT

Siti Norma Yaakob J:
The events leading to the filing of the instant proceedings happened as follows.

On 28 July 1987, the intervener made a claim for recognition of the applicant's workmen under s. 9(2) of the Industrial Relations Act, 1967 (the Act). The applicant disputed the intervener's claim on 15 August 1987, citing 5 ground for doing so. The intervener reported to the Director General for Industrial Relation (DGIR) pursuant to the provisions of s. 9(4) of the Act.

On 8 September 1987, the DGIR, acting under Regulation 4(1) (a) of the Industrial Relations Regulations 1980 (the 1980 Regulations), requested the applicant to furnish him with its worker as at 28 July 1987, in respect of whom recognition was sought by the intervener. This way to enable the 2nd respondent, acting under Regulation 4(1) (c) of the Regulations, to ascertain whether such workmen are members of the intervener.

The applicant supplied the list of its workmen to the DGIR on 8 October 1987, and it also asked that is be given the opportunity to participate in the membership check to be conducted by the 2nd respondent. This request for participation was

disallowed and on 6 July 1988, the DGIR informed the applicant that the membership check conducted by the 2nd respondent showed that 78.98% of the applicant's workmen, in respect of whom recognition was sought, are members of the intervener as at 28 July 1987, and to that end, recognition was granted to the intervener to represent such workmen.

The applicant refused to accord such recognition and since the matter could not be resolved under s. 9(4A) of the Act, the DGIR referred the matter to the 1st respondent and acting under s. 9(5) of the Act, the 1st respondent decided on 21 October 1988, that the applicant is to accord recognition to the intervener. Dissatisfied, the applicant seeks to have this decision quashed by way of *certiorari*.

The applicant contends that:

(1) there was a breach of natural justice when it was not allowed to participate in the membership check conducted by the 2nd respondent and not given an opportunity to be heard before that 1st respondent made his decision.

(2) the manner in which the calculation of the majority of workmen entitled to be recognised, is wrong as the denominator should be the total number of its workers and not the total number of workers in a given class in respect of whom recognition is sought.

In conducting the membership check, the 2nd respondent was merely performing an administrative act which he was empowered to do under Regulation 4(1) (c) of the 1980 Regulations. He was not sitting as an Arbitrator deciding on the rights of such workmen when he was conducting the membership check but merely to ascertain the percentage of workmen in respect of whom recognition was sought. To that end, the rules of natural justice have no application whatsoever. For so long as all the requirements and procedures in the 1980 Regulations have been complied with, and there is no suggestion to say otherwise, I find no irregularity in the 2nd respondent's action in conducting the membership check.

Likewise, there is nothing to suggest that the 1st respondent had exceeded his jurisdiction under s. 9(5) of the Act when he decided to grant recognition and his affidavit affirmed on 8 January 1990, testifies to that fact and since there is no provision in either the Act or the 1980 Regulations which entitles the applicant to be heard before the 1st respondent made his decision on 21 October 1988, I see no justification for the applicant's complaint that it had been denied the right to be heard before the 1st respondent made his decision.

The representation of the applicant's workmen by the intervener is based on the majority of such workmen being members of the intervener. In this respect, the applicant questions the denominator used by the 2nd respondent to arrive at the percentage of 78.98%. It contends that the majority should be calculated on the total number of its workmen and not on the total number of workmen of a given class that is seeking recognition as was done by the 2nd respondent.

For the purpose of calculating the majority, what should the denominator be? The answer lies in s. 9(1) of the Act, which excludes 4 categories of workmen which the intervener has no right to represent. These 4 categories are those employed in the following capacities:

(1) Managerial capacity.

(2) Executive capacity.

(3) Confidential capacity, or

(4) Security capacity.

Thus if the total number of workmen is accepted as the denominator, this would mean that the intervener would be representing workmen who fall within any of the prohibited 4 categories above and this would run foul of s. 9(1).

Since the intervener can only represent a class of workmen, it is the total number of workmen within that class that is taken into account when calculating the percentage of workmen who are members of the intervener. It is, therefore, not right to consider the total number of workmen employed by the applicant as the denominator.

On the fact of this case, I find nothing wrong with the format of calculation adopted by the 2nd respondent and considering that there was no excess of jurisdiction on the part of the 1st respondent, I had accordingly dismissed the applicant's originating motion with costs.